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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,403	12/05/2003	Wilhelm Fischbach	20020/10012	9746

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EXAMINER

SEMUNEGUS, LULIT

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/728,403

Applicant(s)

FISCHBACH ET AL.

Examiner

Lulit Semunegus

Art Unit

3641

Uli

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/18/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 14, 19, 22 and 23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The disclosure does not describe how and in what manner the breechblock and/or the recoil movement of the breechblock opens the dust cover. With reference to claim 14, the disclosure does not describe as to how the pins having different magnetic fields affect the closing/opening of the dust cover.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the crimped portion, and the two opening with the respective dust covers in claims 7, 20 and 21 and three magnetic pins in claims 12 and 13 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate

Art Unit: 3641

prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,2 and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murello et al (6,523,293) in view of Swink (4,753,495). Murello et al teach a firearm comprising a dust cover with an ejection opening that is biased toward the open position by a spring (fig. 1). Murello et al further teach a second opening and a second dust cover (9a,9b). Murello et al teach all the limitations of claims 1,2 and 17-23 except a magnetic lock. Swink teaches a housing constructed from plastic (34c) comprising:

Art Unit: 3641

defining an opening; a dust cover (16) to cover the opening in the housing, the dust cover being pivotable between an open position and a closed position (18); and a magnetic lock (19) to secure the dust cover in the closed position. At the time of the invention, it would have been obvious to one ordinarily skilled in the art to have the ejection openings of Murello et al be secured by a magnetic lock as taught by Swink instead of a pin since Swink teaches using magnetic lock is a well known method to open and close a dust cover. Furthermore, Murello teaches multiple dust covers to cover ejection openings (7a,7b) biased by a spring (col. 3, lines 49-52) are well known since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murello et al (6,523,293) and Swink (4,753,495) as presented above further in view of Su (6,550,298). Murello et al and Swink teach all the limitations of claims 3-16 except magnetic pins and magnetic strip placement on the dust cover or housing.

In regards to claims 3 and 10-16, Su teach magnetic pins (24). At the time of the invention, it would have been obvious to one ordinarily skilled in the art to use magnetic pins instead of magnetic strip of Murello et al or Swink since Su teach using magnetic

Art Unit: 3641

pin or magnetic strip or any of these known equivalents of using a locking method would be within the level of ordinary skill in the art. Furthermore, it would have been obvious to have multiple magnetic pins since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

In regards to claims 4-9, at the time of the invention, it would have been obvious to have the magnetic strip embedded/crimped in the dust cover or housing and have the magnetic strip attached at the side of the dust cover since it has been held that any method of attaching or installing a magnetic strip or joining together is well known in the art. Further the location of the magnetic strips or pins on the dust cover or housing is obvious since installing the magnetic device at any location solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the pins or strips placed anywhere on the housing or dust cover which is to close and open the dust cover.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Murello et al (6,314,672) teaches a plastic housing constructed substantially from non-magnetic material defining an opening (col. 3, lines 36).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lulit Semunegus whose telephone number is (703) 306-5960. The examiner can normally be reached on Mon-Friday.

Art Unit: 3641

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on (703) 306-4198. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11/8/04

Lulit Semunegus  
Examiner  
Art Unit 3641



MICHAEL J. CARONE  
SUPERVISORY PATENT EXAMINER